

# NOTICES

SECTION B  
NEWS AND VIEWS  
VOL. 24, NO. 42  
OCTOBER 17, 1985

## WRITS OF CERTIORARI

### Petitions for Writ of Certiorari Filed and Pending:\*\*

- No. 16063 Kenneth Bobbin vs. State 9/18/85  
No. 16065 Twile Muise vs. State 9/18/85  
No. 16076 Michael Rushing vs. State 9/25/85

\*\*PETITIONS FOR CERTIORARI INVOLVING COA  
MEMORANDUM OPINIONS ARE NOT INCLUDED IN THIS LIST

### Certiorari Granted and Under Advisement:

- No. 15495 Western Flying vs. Brooks 7/19/84  
No. 15597 State vs. Gracie Leal 9/18/84  
No. 15755 State vs. Ball (etc.) 2/12/85  
No. 15764 Clothier vs. Lopez 2/20/85  
No. 15771 Eberline Instrument vs. Felix 3/5/85  
No. 15818 State vs. Cohen & Atava 4/10/85  
No. 15823 Austin vs. Austin 4/10/85  
No. 15839 Carl Case vs. State 4/23/85  
No. 15841 Cindy Armijo vs. Garry Martin 4/23/85  
No. 15848 Jorge Garcia vs. State 5/6/85  
No. 15850 Thunder Corp vs. Karbel 5/6/85  
No. 15875 Kollman vs. Kollman 5/16/85  
No. 15874 Landrum vs. Security Nat'l 5/17/85  
No. 15900 Peterson vs. State 6/4/85  
No. 15903 Logan vs. City Abq 6/12/85  
No. 15905 Ricky Jones vs. State 6/14/85  
No. 15923 Dunning vs. Dunning 6/17/85  
No. 15919 State vs. William Wayne Pitts 6/25/85

- No. 15935 Levitt vs. Mulford 6/25/85  
No. 15947 State vs. Juan Lopez 7/3/85  
No. 15959 Chavez vs. Regents UNM 7/3/85  
No. 15960 Valentine Anaya vs. State 7/3/85  
No. 15952 Sanchez vs. City Tucumcari 7/18/85  
No. 15976 State vs. Robert Earl Davis 8/2/85  
No. 15977 Milne vs. Lieb 8/2/85  
No. 15986 State vs. Alvino S. Chacon 8/2/85  
No. 15982 Wittkowski vs. State 8/2/85  
No. 16014 Gary D. Johnson vs. State 8/23/85  
No. 16025 Kenneth G. Jaramillo vs. Kaufman  
Plumbing 9/13/85  
No. 16047 Fierro vs. Stanley's Hardware 9/19/85

### Petitions for Writ of Certiorari Denied:

- No. 16018 Bearclaw vs. Dept Human Services.  
9/10/85  
No. 16023 Jimmy Saiz vs. State 9/10/85  
No. 16040 Donald Ray Gardner vs. State 9/10/85  
No. 16024 Charles E. Lyon vs. State 9/13/85  
No. 16046 Joe Montoya vs. State 9/13/85  
No. 16049 Modesto Martinez vs. State 9/18/85  
No. 16050 Quintana vs. Bd Ed 9/18/85

### Writs of Certiorari Quashed:

- No. 15910 Johnny Martinez vs. State 9/10/85  
No. 15693 John Deere vs. Salinas 9/25/85  
No. 15694 Salinas vs. John Deere 9/25/85  
No. 15626 Pauline Angel vs. Safeway 9/25/85

Correction: No. 8028 - State vs. Titus Aaron - Cert Applied for 7/2/85

## BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of  
**TOM CHERRYHOLMES,**  
An Attorney Admitted to Practice Before the Courts  
of the State of New Mexico

Disciplinary No. 01-85-54

### FORMAL REPRIMAND

This matter arose out of three separate incidents where you failed to control your temper and where you verbally and physically abused persons who were participants in legal proceedings in which you were involved.

The hearing committee found that you committed four separate violations of Disciplinary Rule 7-102 (A) (8), which involved three individuals and two separate incidents. Rule 7-102 (A) (8) prohibits an attorney from knowingly engaging in illegal conduct

or conduct contrary to a disciplinary rule. By committing four separate acts of battery, you were found to have engaged in illegal activity.

The first incident occurred during a preliminary hearing in which you represented the accused. During your examination of a witness, you noted to the court that an officer who was a potential witness was present in the courtroom. At that time you requested that he be sworn and placed under the rule concerning the exclusion of witnesses. After the officer was sworn, he attempted to approach the bench, but you took it upon yourself to prevent him from so doing, without having been requested or authorized to do so by the court. You approached him in a threatening manner, placing your face directly in line with his face, forcefully pressed your nose down against his, and ordered him out of the courtroom.

Later, during the same preliminary hearing, a recess was taken so that a tape recording could be made. You and the Assistant District Attorney were present in the room. A second police officer attempted to enter the courtroom at the District Attorney's request. You intentionally held the door shut to

prevent the officer's access. After the officer finally gained entrance to the courtroom, you met him and shoved him back towards the door.

Subsequently, the first officer returned to the courtroom to investigate. As he entered the courtroom you met him at the door and pushed him out as well.

The second incident occurred in your office while you were conducting the deposition of the adverse party in a civil suit pursuant to notice and a subpoena duces tecum. You became aware that the deponent had failed to produce many of the items requested in the subpoena duces tecum. You then became belligerent and insulting to the deponent and his attorney. After making a snide and inappropriate remark to opposing counsel, you abruptly came from behind your desk and approached him in a menacing manner. As the attorney turned to gather up his file materials, you pushed the deponent causing him to lose his balance and nearly fall.

The hearing committee found that your behavior in this circumstance was in violation of Disciplinary Rules 1-102 (A) (5), 1-102 (A) (6), as well as 7-102 (A) (8).

Although the Board takes notice that the officers in the first incident may have overreacted somewhat to the situation and further notes that it is indeed irritating when a witness fails to bring requested materials to a deposition, your conduct in this matter was nonetheless unreasonable and highly unprofessional. You have overstepped the acceptable bounds of zeal by engaging in illegal acts of battery upon other participants in the legal process.

The adversarial system, of which you are a part, contemplates an element of controlled civility. There is no room for physical confrontation in our system of justice. Your willingness to employ physical intimidation, verbal attacks, threats and physical violence is prejudicial to the administration of justice in violation of Disciplinary Rule 1-102 (A) (6). This type of conduct is unnecessary, offensive and will not be tolerated by the members of the bar of this state or by this Board.

The hearing committee found a third incident where-

in your conduct fell below the standard of conduct expected of members of the bar of this state. This incident occurred during a criminal trial in which you represented the defendant. During the trial, the Judge asked you several times to advise him how a previous criminal case had been decided. A recess was declared so the Judge could find an answer to his inquiry.

Immediately after the Judge's departure from the bench you made an obscene remark directed to the Judge. The statement was made in an angry tone of voice and loud enough to be heard in the spectator's section of the courtroom.

Although the hearing committee has questioned the Judge's conduct in this matter, that fact does not excuse your conduct. Attorneys who choose to criticize judges are required to do so with some degree of respect for the office. Your public display of disrespect for the Judge should not go without comment. The hearing committee and board panel found that your statement violated Disciplinary Rule 7-102 (C) (6) which prohibits an attorney from engaging in undignified discourteous conduct which is degrading to a tribunal. By engaging in such conduct you have eroded public confidence in our profession and ultimately in our entire system of justice.

This formal reprimand will be filed with the Supreme Court in accordance with Rule 11(d) of the Supreme Court Rules Governing Discipline and will remain part of your permanent record with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 11(d), the entire text of this reprimand will be published in the State Bar of New Mexico *News and Views*.

The costs of this action in the amount of \$4,621.25 are assessed against you and should be paid to the Disciplinary Board office on or before 11/1/85. In addition the costs of preparing the transcript of today's proceedings for filing with the Supreme Court are assessed against you. These are to be paid to the Disciplinary Board office no later than ten (10) days from your receipt of a copy of that bill.

s/ Keith S. Burn, Chairman  
Disciplinary Board

# BULLETIN

ADVANCE OPINIONS OF  
THE SUPREME COURT &  
THE COURT OF APPEALS

*From The New Mexico Supreme Court*

STATE OF NEW MEXICO,  
Petitioner,

versus

GRACIE LEAL,  
Respondent.